

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MICHAEL RAY TIMMONS	§	
v.	§	CIVIL ACTION NO. 6:05cv234
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Michael Timmons, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of Timmons' allegations, the Magistrate Judge issued a Report recommending that the petition be dismissed. The Magistrate Judge observed that this is the second petition which Timmons filed challenging this same conviction; his earlier petition was adjudicated on the merits and denied on April 5, 2005, and no appeal was taken. The Magistrate Judge noted that Timmons did not show that he had received leave from the Fifth Circuit Court of Appeals to file a second or successive petition, as required by 28 U.S.C. §2244(b)(3).

Timmons received a copy of this Report, but filed no objections thereto; instead, on July 25, 2005, Timmons wrote to the Court asking that his petition be dismissed. Because he did not file objections to the Report, Timmons is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted

by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has examined the Petitioner's pleadings, the Report of the Magistrate Judge, and all documents and records in the case. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED without prejudice, with refiling subject to receipt of permission from the Fifth Circuit Court of Appeals to file a successive petition. It is further

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 18th day of August, 2005.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE